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MEMORANDUM

TO: Care McInnis, DeBeque Town Administrator

FROM: David McConaughy, Town Attorney

RE: Citizen Comments at January 26, 2021 Board of Trustees Meeting

DATE: January 27, 2021

ISSUE

You asked me to review and provide input on the public comments offered by Mr. Brock Rigsby at last night's Board of Trustee's meeting regarding the liquor license hearing at the prior meeting. I have summarized those comments below and offer my thoughts.

ANALYSIS

At the outset, it is important to note that public comments by citizens of the Town are welcome. Public input makes government operate better. Citizens have the right to petition local governments under the First Amendment to the United States Constitution and should always be afforded due respect. While I disagree with some of Mr. Rigsby's points as summarized below, I very much appreciate his participation and his right to express his viewpoints.

1. *Is the Mayor entitled to vote?*

Yes. As a statutory town, DeBeque is subject to C.R.S. § 31-4-301, *et seq.* Section 31-4-302 provides that the Mayor is the presiding officer at all meetings of the Board of Trustees and has the same voting powers as any member of said board. That statute does include a provision authorizing a statutory town to adopt an ordinance providing that the Mayor shall only vote in the case of a tie. However, DeBeque has not adopted any such ordinance. As such, the Mayor has a right to vote and in fact has a duty to vote on all matters that come before the Board of Trustees unless he has a personal conflict of interest, just like any other Trustee.

2. *Does the Mayor Pro Tem have a right to vote?*

Yes. C.R.S. § 31-4-303 authorizes the Board of Trustees to appoint one Trustee as Mayor Pro Tem to perform the Mayor's duties if the Mayor cannot attend a meeting or is absent from the Town. The appointment of a Trustee as Mayor Pro Tem does not change that Trustee's right and duty to vote on any matter that comes before the Board. When the Mayor is present and handling

the meeting, the Mayor Pro Tem acts as a regular Trustee. When the Mayor is absent, the Mayor Pro Tem presides at the meeting and has a right to vote just like the Mayor does.

3. *Quasi-Judicial Hearings*

Mr. Rigsby is correct that a hearing to consider renewal of a liquor license is a “quasi-judicial hearing” meaning that the Board must base its decision on evidence presented in the record of the hearing, and the applicant has certain rights of due process including the right to cross-examine witnesses. For the hearing regarding Beer Mugs N Barstools, the Board initially passed a motion to approve renewal following a public hearing on October 20, 2020. However, under the procedural rules adopted by the Town, a Trustee has a right to move to reconsider a decision made at the prior meeting. That happened in this case at the November meeting, which resulted in voiding the prior vote to approve the license renewal. Therefore, a new hearing was noticed and set for the December 22, 2020 meeting. After the close of evidence, a majority of the Board of Trustees voted to deny the license renewal. While unusual, these actions complied with Colorado law and the Town’s procedural rules.

4. *Will there be a lawsuit against the Town costing taxpayer money?*

The Colorado Rules of Civil Procedure (“C.R.C.P.”) include provisions regulating lawsuits to challenge decisions made by local governments at quasi-judicial proceedings such as a liquor license renewal. Pursuant to C.R.C.P. 106(b), a complaint seeking review of a quasi-judicial decision by a local government under Rule 106(a)(4) must be filed in district court within 28 days after final decision. I have checked the records of the Mesa County District Court and have found nothing to show that a lawsuit under C.R.C.P. 106 was filed within 28 days after December 22, 2020. As such, it is now too late to do so.

Any citizen can of course sue anyone over anything imaginable, but that does not mean they would prevail. If the owners were to file a new suit today, the Town’s first defense would be that any challenge is time-barred under C.R.C.P. 106. I won’t speculate as to what other legal theories anyone might conceivably attempt to raise in court, but I can assure you that any suit against the Town would be vigorously-defended.

The Town is a member of the Colorado Intergovernmental Risk Sharing Agency (“CIRSA”) which provides insurance coverage to the Town. In the event of any suit, a claim would be tendered with a request for CIRSA to handle the matter in order to minimize taxpayer expense. Of course, coverage would depend on the nature of any claims asserted. I hope and expect that an insurance claim will not be necessary because the Town Board acted within its legal authority in this matter and because the deadline to file suit under Rule 106 has already lapsed.